

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:23-CV-152

David John Hetzel, MD,

Plaintiff,

vs.

ANC Healthcare, Inc.;
ANC Mission Hospital, Inc.;
HCA Healthcare, Inc.;
HCA Management Services, LP;
MH Master Holdings, LLLP;
MH Hospital Manager, LLC;
MH Mission Hospital, LLLP; and
HCA Healthcare Mission Fund, LLC,
Defendants.

**Motion to Seal Brief and Exhibit
Supporting Motion to Dismiss**

The Mission Defendants¹ hereby request leave under Local Rule 6.1 to file materials in support of their motion to dismiss under seal. To comply with Local Rule 6.1, Mission states the following:

1. The Mission Defendants wish to file the following materials under seal:
 - a. An unredacted copy of the National Practitioner Data Bank report at issue in this lawsuit.
 - b. An unredacted version of Mission's brief in support of their motion to dismiss, which includes portions of the Report.
2. Dr. Hetzel has consented to the filing of these documents under seal.
3. Sealing is necessary because "[i]nformation reported to the NPDB is ... confidential" and must not be disclosed except through the procedures for querying the Data Bank and challenging a Data Bank report. 45 C.F.R. § 60.20(a). *See United*

¹ MH Mission Hospital, HCA Healthcare, HCA Management, MH Master, MH Hospital Manager, and HCA Healthcare Mission Fund.

States v. DVH Hospital Alliance, 2023 WL 3724178 (D. Nev. 2023) (sealing Data Bank reports); *Doe v. Azar*, 2020 WL 13349088 (M.D. Fla. 2020) (same).

4. There is no alternative to filing the Report and the unredacted brief under seal because the Report is directly at issue in this case. Every one of Dr. Hetzel's claims revolves around the Report's contents. So Mission must be able to discuss the Report's contents. And discussing the Report's contents in a public filing would disclose "information reported to the NPDB" to the public, which § 60.20 is designed to prevent. 45 C.F.R. § 60.20(a).

5. We seek permanent sealing of the Report because the confidentiality mandate of § 60.20 is not time-limited.

6. Along with this motion, we are filing the following:

- a. A redacted copy of the brief and its exhibits.²
- b. An unredacted copy of the brief and its exhibits, under seal as permitted by Local Rule 6.1(d).

This the 25th day of September, 2023.

ROBERTS & STEVENS, PA

/s/David Hawisher

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Counsel for Mission

² Exhibit 1 is the Report. Exhibit 2 is the NPDB Guidebook, which is not confidential but is included as an exhibit to both versions of the brief for ease of reference.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document using the CM/ECF system, which automatically serves all counsel of record.

This the 25th day of September, 2023.

ROBERTS & STEVENS, PA

/s/David Hawisher

David Hawisher